

California Victim Compensation and Government Claims Board
Open Meeting Minutes
December 15, 2011, Board Meeting

The California Victim Compensation and Government Claims Board (Board) convened its meeting in open session at the call of Leslie Lopez, Deputy Secretary, State and Consumer Services Agency, at 400 R Street, Sacramento, California, on Thursday, December 15, 2011, at 10:06 a.m. Also present was Board member Michael Ramos, San Bernardino County District Attorney. Board member Richard Chivaro, Chief Counsel, acting for and in the absence of John Chiang, Controller, joined the meeting while it was in session.

Board staff present included Julie Nauman, Executive Officer; Kathy Cruz, Chief Deputy Executive Officer; and Wayne Strumpf, Chief Counsel. Tisha Heard, Board Liaison, recorded the meeting.

The Board meeting commenced with the Pledge of Allegiance.

Item 1. Approval of Minutes of the November 17, 2011, Board Meeting

Chairperson Leslie Lopez and Board member Chivaro voted to approve the minutes of the November 17, 2011, Board meeting. Board member Ramos abstained from the vote.

Item 2. Public Comment

The Board opened the meeting for public comment. No comment was provided.

Item 3. Executive Officer's Statement

Update Regarding Revisions to the CalVCP Application Form

Last month during public comment, Linda Siegel expressed concern regarding Section 13 on the CalVCP application wherein county social workers are required to sign the application in a manner that suggested that they would personally repay the VCGCB if an overpayment was made to the crime victim.

Executive Officer Nauman explained that it was not the CalVCPs intent to hold county social workers financially responsible. It is understood that social workers are assisting minors who are victims. Ms. Nauman reported that staff reviewed and revised Section 13 to include a special section for county social workers to sign in their capacity as social workers. Next week the proposed revised section would be sent to key stakeholders for their review and input; thereafter, staff would post the revised application on the VCGCB website.

Acknowledgement of VCGCB Staff Serving in the Armed Forces

Edward Carrillo, Senior Staff Counsel and Army reservist, will serve a one-year tour of duty in Afghanistan and Anita Younger, CalVCP analyst, is currently on active duty in an undisclosed location. Executive Officer Nauman wished them both well and a safe and return home.

VCGCB Appointments

• **Chief Deputy Executive Officer**

Kathy Cruz was appointed Chief Deputy Executive Officer on December 1st. Ms. Cruz was previously the VCGCB's Chief Information Officer and as such has successfully led the VCGCB's Information Technology Services division during a very critical time. Ms. Cruz brings to her new position familiarity with the Board's programs and operations as well as extensive executive level experience over her 30-year career.

• **Deputy Executive Officer, Administration and Finance Division**

Miles Burnett was appointed Deputy Executive Officer, Administration and Finance Division, on December 1st. Mr. Burnett was previously the Assistant Deputy Director of the Division of Administration at the State Water Resources Control Board. Mr. Burnett has extensive

experience managing a broad range of administrative functions and a strong background in fiscal management.

- **Deputy Executive Officer, CalVCP and Government Claims Program**

Mindy Fox was appointed Deputy Executive Officer, CalVCP and Government Claims Program, on December 12th. Ms. Fox was previously the Program Manager of the Office of Education and the Environment at CalEPA. Ms. Fox has over 25 years of program and executive level managerial experience.

Rubia Packard, Deputy Executive Officer, Retiring

Executive Officer Nauman announced that Rubia Packard, Deputy Executive Officer, CalVCP and Government Claims Program, would retire on December 31. Ms. Nauman stated that Ms. Packard became DEO at the VCGCB over two years ago and has done an outstanding job leading both programs. Ms. Packard implemented the process improvement project, the on-line program manual, and many other initiatives. Ms. Nauman presented Ms. Packard with a resolution acknowledging her for over 35 years of State service and thanked her for her strong leadership.

Item 4. Contract Report

Informatix, Inc.

Two additional consultants are needed to perform software quality assurance and testing services for Project B1 and the Final Deny Letters Project. Regulation changes and statutory requirements are driving these efforts. The Board approved the purchase order in the amount of \$97,920.00.

Celer Systems, Inc.

Two web application developers are needed to provide development services for the CaRES Modification Project until recently approved positions are filled in order for the project to stay on schedule. The Board approved the purchase order in the amount of \$89,400.00.

Item 5. Government Claims Program

Consent Agenda (Nos. 1- 274)

The Board voted to adopt the staff recommendations for item numbers 1-274, with the following exceptions: item numbers 65 (G595428) and 66 (G596312) were removed to allow the claimants an opportunity to address the Board; item numbers 78 and 122 were removed and continued to allow the involved parties an opportunity to appear and address the Board at next month's meeting; and item number 162 was removed so that additional information received could be reviewed by the involved parties.

Consent Agenda Appearance

Item 65, G595428

Claim of Dana Ogden

Dana Ogden participated in the meeting via conference call. There was no representation provided by the California State Teachers' Retirement System or the California Community Colleges Chancellor's Office.

Ms. Ogden requested compensation from the California State Teachers' Retirement System (CalSTRS) and the California Community Colleges Chancellor's Office (CCCCO) in the amount of \$8,637.44 for 134.96 hours of sick leave that she alleged should have been credited to her retirement account. Although neither CalSTRS nor the CCCCCO personally appeared at the meeting, CalSTRS and the CCCCCO provided written recommendations to reject the claim. Government Claims Program Staff recommended that the claim be rejected.

Ms. Ogden stated that CalSTRS promised to transfer 134.96 hours of sick leave, totaling \$4,637.44, into her CalSTRS account. She stated that she made ongoing attempts for payment of sick leave in the form a credit to her CalSTRS retirement account. On several occasions, CalSTRS advised her that they made a mistake in her case and they would try to resolve it; however, nothing resulted in those attempts. Had she not been given incorrect information, she could have added it to her settlement agreement; however, she was unable to do so because she did not receive the correct information from CalSTRS until after the settlement agreement was closed. Ms. Ogden requested that the Board overturn the staff recommendation and allow her claim.

Board member Ramos stated that he and the other Board members read and considered the additional information submitted by Ms. Ogden, but due to the factors stated by staff, he would move the staff recommendation to reject her claim.

The Board voted to adopt the staff recommendation to reject the claim.

Consent Agenda Appearance

Item 66, G596312

Claim of Bowe Bell and Howell

Jim Gioia, Executive Director of Service Operations, Bell and Howell Company (formerly Bowe Bell and Howell), appeared and addressed the Board. There was no representation by the Department of General Services.

Jackie Tinetti, Government Claims Program Manager, explained that the claim of Bowe Bell and Howell came before the Board last month. Bowe Bell and Howell sought compensation in the amount of \$269,915.50 for services provided to the Department of General Services. Ms. Tinetti stated that at last month's meeting, the claimant shared additional information related to their claim, which was reviewed by Government Claims Program (GCP) staff and the Department of General Services (DGS). After review of the information submitted by the claimant, DGS reaffirmed its position that the claim was not valid. The claimant was required, under contract, to provide the services that they are now claiming require additional payment. Further, the recommendations by GCP staff and DGS have not changed. GCP and DGS recommend that the claim be rejected.

Mr. Gioia stated that general contract number 3114299 was issued by DGS, Office of State Publishing. Under the contract, Bowe Bell and Howell (BB&H) provided disaster recovery printing and mailing services for the California Child Support Automation System. BB&H sought payment to compensate them for services that DGS directed BB&H to provide which were outside the contract requirements. He stated that at the time DGS admitted that the services were not part of the fixed price and agreed to pay them. BB&H provided those services and relied on DGS' promises to pay them. Mr. Gioia stated that the fair market value for those services was \$269,915.50, which represented the amount of their claim. He stated that DGS accepted and used those services, but is now unwilling to pay for them.

Mr. Gioia explained that as part of providing disaster recovery services, the contract with DGS required BB&H to provide a virtual private network that would enable BB&H and DGS to access and share information in a secure electronic portal. BB&H was performing the contract according to all of the specifications and requirements. In May 2008 DGS expressed to BB&H that the existing virtual private network portal, as required by the contract, would not satisfy IRS requirements concerning data transmission and security. In June 2008 DGS met with BB&H and recommended that BB&H provide a T3 data line in order to satisfy IRS requirements. BB&H provided DGS with a quote for the additional services. In July 2008, DGS directed BB&H to install, manage, and administer the T3 data line. At that time DGS acknowledged that the additional services were not required under the contract which is the reason that DGS issued contract amendment number 2 in

May 2009 to reflect the additional T3 data line service. BB&H signed amendment number 2; however, DGS did not countersign the amendment. Based on BB&H's prior experience with DGS, they continued to provide the additional services even though DGS did not countersign. He stated that early in the contract performance, DGS issued amendment number 1, which added more than \$46,000 to reimburse BB&H for additional recovery services directed by DGS. BB&H signed the amendment but DGS did not; however, DGS paid for those services. Mr. Gioia stated that DGS repeatedly promised to pay BB&H. BB&H believed DGS would not have issued amendment number 2 if they did not wish to pay for those services. Relying on DGS' promises, BB&H continued to perform those additional services until DGS instructed BB&H to terminate the data line on June 22, 2010. Mr. Gioia stated that DGS accepted and used those additional services to its benefit for more than a year knowing that they were beyond the contract requirements. He further stated that BB&H is entitled to full payment for the additional services it provided to DGS based on DGS' direction.

Board member Ramos asked Mr. Gioia if all of the services were provided and performance completed and whether, relying on DGS' past practices, there was a detrimental reliance on the part of BB&H.

Mr. Gioia stated that the services were provided and completed. He stated that BB&H submitted several email communications from DGS that directed them to install the data line.

Executive Officer Nauman recommended that the Board continue the claim to allow a representative from DGS an opportunity to present and explain their position.

The Board voted to continue the claim to the January 19, 2012, Board meeting to allow a representative from DGS an opportunity to attend the meeting.

Item 6. Claim of West Star Environmental, Inc.
Claim Number G588905

Dave Mendrin appeared on behalf of West Star Environmental, Inc. John McDonough, Senior Supervising Counsel, appeared on behalf of the California Highway Patrol.

West Star Environmental, Inc., requested compensation from the California Highway Patrol in the amount of \$72,596.24 for alleged unpaid invoices regarding services provided during 2006 and 2007.

Jackie Tinetti, Government Claims Program Manager, explained that the claim of West Star Environmental, Inc. (West Star), came before the Board at the October 20, 2011, Board meeting. At that time, additional information was received from the claimant and the Board continued the claim. Government Claims Program (GCP) staff and the California Highway Patrol (CHP) reviewed the additional information and the recommendation remained unchanged. GCP and CHP recommended that the Board reject the claim because it exceeded the four-year statute of limitations.

Mr. Mendrin stated that he received a letter from the GCP recommending rejection of the claim due to the statute of limitations; however, the claim had not yet expired. He received payments on the claims on December 3, 2010, and July 25, 2011; therefore, the four-year statute of limitations would begin on July 25, 2011. West Star performed the work and should be paid. He stated that CHP staff provided West Star with many excuses for nonpayment, including being told that the person who handled invoices retired to CHP offices relocating.

Mr. McDonough stated that the claimant correctly stated that the CHP continued to pay bills that were presented in a timely manner; however, there were some invoices totaling approximately \$20,000 that date back to 2005. He stated that those funds were expended a long time ago and the CHP does not have the capability to pay for invoices presented untimely. The CHP does not have records that date back that far, because their retention period only goes back three years. He further stated that the CHP is not obligated to pay invoices for work that may or may not have been performed after the statute of limitations.

The Board voted to adopt the staff recommendation to reject the claim.

Item 7. Claim of Data Protection Services
Claim Number G591785

Data Protection Services requested payment in the amount of \$97,900.00 for data storage services provided to the California Department of Mental Health.

The Department of Mental Health and the Government Claims Program staff recommended that the claim be allowed in the amount of \$97,900.00 under authority of Government Code section 965 (agency pay).

The Board voted to adopt the staff recommendation to allow the claim in the amount of \$97,900.00 under authority of Government Code section 965 (agency pay).

Item 8. Claim of Douglas Anderson, CPA
Claim Number G597906

Douglas Anderson, C.P.A. requested payment in the amount of \$50,861.37 for accounting services provided to the California Department of Transportation from February 2011 through June 2011.

The California Department of Transportation and Government Claims Program staff recommended that the claim be allowed in the amount of \$50,861.37 under authority of Government Code section 965 (agency pay).

The Board voted to allow the claim in the amount of \$50,861.37 under authority of Government Code section 965 (agency pay).

Item 9. Claim of Joshua Emigh
Claim Number G598907

Joshua Emigh appeared and addressed the Board. John McDonough, Senior Supervising Counsel, appeared on behalf of the California Highway Patrol.

Jackie Tinetti, Government Claims Program Manager, stated that Mr. Emigh requested reimbursement from the California Highway Patrol in the amount of \$4,500 for the alleged damage to his vehicle. Ms. Tinetti explained that the Board approved Mr. Emigh's claim at the November 17, 2011, Board meeting; however, it was subsequently determined that the CHP did not receive sufficient notice to attend the meeting. The claim was before the Board to consider a rehearing.

Wayne Strumpfer, Chief Counsel, stated that in order to reconsider the claim, the Board member who made the motion to approve the claim would need to make the motion to reconsider it.

Board member Chivaro, with the concurrence of the Board, voted to reconsider the claim.

Mr. Emigh submitted three eyewitness reports of the incident for the Board's consideration. He stated that he was involved in a collision with another vehicle. After the collision, the fire department arrived on scene, parked immediately in front of his vehicle, and took control of the traffic. He stated that the CHP officer who arrived on scene exercised poor judgment when he ignored Mr. Emigh's warning not to start his vehicle because it was leaking fluids. He stated that the officer started his vehicle anyway causing the vehicle's engine compartment to burst immediately into flames. The damage to his vehicle caused by the fire totaled over \$8,000, which was more than the value of the vehicle. He further stated that he was seeking compensation from the CHP in the amount of \$4,500, which represented the purchase price of the vehicle.

Mr. McDonough stated that the collision occurred to the claimant's uninsured vehicle. The CHP officer took appropriate action and made a professional decision to relocate the vehicle; regrettably, the car caught fire. He stated that there is no liability on part of the CHP. He further stated that the vehicle was totaled and Mr. Emigh should have had automobile insurance.

Chairperson Lopez asked Mr. McDonough to explain what he based his statement on with regard to the vehicle being totaled.

Mr. McDonough explained that his statement regarding the car being totaled was based on both the estimation by the officers involved and by fire and emergency personnel who arrived on scene shortly after the accident. He stated that the officer thought the vehicle was capable of being driven off the road; unfortunately, that was not the case. The officer should not be held responsible for acting in a reasonable manner given the circumstance presented at that time. The State has immunity when law enforcement officers act in a reasonable and professional manner. The CHP is charged with the responsibility of traffic control and the safety of the motoring public. Those decisions allow the CHP to take reasonable measures.

Mr. Emigh stated that his vehicle did not need to be moved because traffic was flowing. With regard to the condition of his vehicle, there was no expert on automobile collision damage on scene to assess the damage to his vehicle; therefore, the CHP was not in a position to determine whether his vehicle was totaled. The only damage to his vehicle was to the fender, headlight, axle, and rim. He further stated that when he later contacted the CHP regarding the incident, he was told that they had no information because the officer did not file a report. He stated that the eyewitness reports that he provided to the Board confirmed that the officer who arrived on scene was very agitated and aggressive.

Board member Ramos stated that Mr. Emigh's claim was complicated because there were witness statements, which would require the testimony of witnesses. The issue then comes down to the reasonable manner of the CHP officer.

Chairperson Lopez stated that she was concerned by the officer's statement that the vehicle was totaled, because once the vehicle was on fire, it would be difficult to establish what happened based on the accident itself. She stated that there were many factual disputes that the Board was not in a position to determine. She explained that, in the event the Board denied Mr. Emigh's claim, it would not mean that his claim had no merit. He could sue the CHP in small claims court where a judge could decide which version of facts is correct. She clarified that she was not suggesting that the Board would deny his claim, but if they did, their decision did not affect the merits of the claim.

Executive Officer Nauman stated that at the last Board meeting, the sitting member of the Board approved the claim of Mr. Emigh. Mr. McDonough stated that the neither the officer nor a representative from CHP was notified of the previous Board meeting.

Board member Ramos thanked Mr. Emigh for providing the Board with a very diligent and professional presentation of his claim. He further stated that he had a good opportunity in court if he presented his case in the same manner in which he did for the Board.

The Board voted to adopt the staff recommendation to reject the claim.

Item 10. Claim of Inter-Con Security Systems
Claim Number G599045

Inter-Con Security Systems requested payment in the amount of \$195,232.53 for security services provided to the California Department of Corrections and Rehabilitation for the period of January 1, 2011, through June 30, 2011.

The California Department of Corrections and Rehabilitation recommended that the claim be allowed in the amount of \$195,232.53 under authority of Government Code section 965 (agency pay).

The Government Claims Program staff recommended that the claim be allowed in the amount of \$195,232.53 under authority of Government Code section 965 (agency pay).

The Board voted to adopt the staff recommendation to allow the claim in the amount of \$195,232.53 under authority of Government Code section 965 (agency pay).

Item 11. Claim of California Association of Food Banks
Claim Number G599493

California Association of Food Banks requested payment in the amount of \$261,113.88 for providing Food Stamp Outreach services to the California Department of Public Health from October 1, 2010, through March 1, 2011.

The California Department of Public Health recommended that the claim be allowed in the amount of \$261,113.88 under authority of Government Code section 965 (agency pay).

The Government Claims Program (GCP) staff recommended that the claim be allowed in the amount of \$261,113.88 under authority of Government Code section 965 (agency pay).

The Board voted to allow the claim in the amount of \$261,113.88 under authority of Government Code section 965 (agency pay).

Item 12. Applications for Discharge From Accountability for Collection

The Board voted to allow the 64 requests by state agencies for discharge from accountability for collection of debt, totaling \$423,546,428.68.

Item 13. Request for Delegation of Authority Under Government Code Section 935.6
by the Department of Motor Vehicles

The Board voted to allow the request by the Department of Motor Vehicles to settle and pay or reject claims for the period of February 1, 2012, to January 31, 2013.

Victim Compensation Program

The Board commenced the Victim Compensation Program portion of the meeting at 10:55 a.m.

Closed Session

Pursuant to Government Code section 11126(c)(3), the Board adjourned into Closed Session with the Board's Executive Officer, Chief Deputy Executive Officer, and Chief Counsel at 10:55 a.m. to deliberate on the proposed decisions numbers 1-95.

Open Session

The Board reconvened into open session at 10:58 a.m. The Board voted to adopt the proposed decisions for numbers 1-95.

Adjournment

The Board meeting adjourned at 10:59 a.m.